Supreme Court, U.S.
FILED

031332 MAR 15 2004

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No.

IN THE

Supreme Court of the United States

CHANDER KANT & ASHIMA KANT,
Petitioners

v.

BREGMAN, BERBERT, & SCHWARTZ, LLC, ET AL.,
Respondents

On Petition For Writ Of Certiorari
To The Circuit Court For Montgomery County, Maryland

PETITION FOR WRIT OF CERTIORARI

CHANDER KANT
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QUESTION PRESENTED FOR REVIEW

Petitioners', Chander Kant and Ashima Kant (the Kants') real residential property in Montgomery County, Maryland with a fair market value of about $350,000 (and a mortgage of about $154,000) was sold for $6,200 at a sheriff sale. This sale was confirmed by the trial court after the Kants posted the required bond within 77 minutes of the sale. Appellate court denied it had jurisdiction.

The Kants present the following question for the Court's review:

Do *Mullane* and *Mennonite* notice requirements apply to sheriff sales; and are there additional due process requirements, including mandatory appellate review, that constrain sheriff sales?

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

CHANDER KANT, an individual on behalf of himself,

ASHIMA KANT, an individual on behalf of herself;

BREGMAN, BERBERT, & SCHWARTZ, LLC, a corporation incorporated in Maryland,

HAITHAM HIJAZI, an individual on behalf of himself.

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OPINIONS BELOW

The Circuit Court for Montgomery County, Maryland entered its judgment on November 20, 2002. Appendix A-1. Petitioners, Chander Kant and Ashima Kant ("the Kants") seek review of this judgment on a writ of certiorari.

The Court of Special Appeals of Maryland gave its opinion on August 21, 2003 denying it had jurisdiction. Appendix A-4. On December 16, 2003, the Court of Appeals of Maryland denied the Kants' petition for a writ of certiorari. Appendix A-7.

BASIS FOR SUPREME COURT JURISDICTION

The present petition is timely filed under 28 U.S.C. § 2101(c) and under Rule 13.3 of this Court. This Court has jurisdiction under 28 U.S.C. § 1257(a) to review on a writ of certiorari a decision by a state court of last resort.

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

Constitution of the United States, Amendment XIV, Due Process Clause.

STATEMENT OF THE CASE

The Kants, both Ph.D. professors, were born in India. They have been citizens of the U.S.A. and of the State of New Jersey since 1989. The present case started with the respondent, Bregman, Berbert, & Schwartz ("BBS") filing a claim for $4,745.22 for unpaid legal fees against the Kants in the District Court for Montgomery County, Maryland ("DC"). In the Kants' timely filed "Notice of Intention to

Defend" they wrote "[this lawyer's] billings are excessive and unjustified. Further, his conduct was unprofessional and unethical."

The DC scheduled hearing on the matter at 8:00 a.m. on February 14, 2001. On February 13, 2001, C. Kant ("Kant") requested the court to continue the case to about 9:15 a.m. on February 14, 2001 and informed BBS' counsel, Rigterink, of this application.[1] Rigterink did not advise the DC that Kant had notified him the previous day of this request. Kant arrived at the DC at about 9:15 a.m. that day. Rigterink was not there. The court clerk advised Kant that at 8:00 a.m. Rigterink asked for and obtained a default judgment, and had left.

Upon the DC's denial of the post-judgment motion, the Kants timely first filed their appeal to the circuit court for Montgomery County, Maryland ("CC"), and then filed their memorandum on appeal. Meanwhile, on BBS'-request, the sheriff levied the Kants' real residential property in Montgomery County, Maryland, appraised it for $199,610, and notified the Kants of this levy. On or before September 21, 2001 he scheduled its public sale at 10:30 a.m. on October 25, 2001, and advertised this sale in a local newspaper on September 21, 2001. He did not notify the Kants of this sale either by personal service or by mail.

Around October 15, 2001, the Kants came to know that the sale had been scheduled through a search conducted by their real estate agent. Kant tried to post a supersedeas bond with the clerk. But, the clerk refused to accept it without an order by the CC Judge Rowan (to whom this case had been assigned). Accordingly, on October 19, 2001, the

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[1]Kant requested this continuance since he was traveling from New Jersey that morning for the hearing.

Kants moved Judge Rowan to fix the bond's amount. They attached to this motion a copy of the sheriff's Notice of Sale. On the same day, BBS filed its consent to the levy-dissolution if a supersedeas bond was filed.[2] The Kants' motion to release property by filing bond was ripe for Judge Rowan's decision on October 19, 2001. However, he rendered his decision fixing the bond-amount for $6,020 at 3:45 p.m. on October 24, 2001, and ordered the release of the property if this bond was posted by 10:30 a.m. on October 25, 2001.

Upon knowing of this decision (through a phone-call placed to Judge Rowan's clerk on October 24, 2001-afternoon), Kant sent that amount by Federal Express to be delivered to CC by 10:30 a.m. on October 25, 2001.[3] However, for some inexplicable reason, Federal Express was late in its delivery to the CC that morning. Meanwhile, sheriff sold the Kants' property to H. Hijazi (called hereinafter as the Sheriff-sale purchaser, SSP) for $6,200. The Kants' supersedeas bond-check reached the court at 11:17 a.m. It was accepted by the CC at 11:47 a.m., and has been on deposit with the CC since 11:47 a.m. on October 25, 2001.

The Kants moved the CC to formally accept their supersedeas bond filed with the CC, and to quash Report of Sheriff Sale and attachment of their property. CC denied this

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[2] On October 18, 2001 the Kants both mailed and faxed a copy of this pleading to BBS, as well as sent it by Federal Express' next morning service to CC.

[3] Kant also faxed copies of the check, Federal Express a address label, and the accompanying line to CC to sheriff on October 24, 2001-evening.

motion on grounds[4] that the "ball game [was] up" at 10:30 a.m. when the bond did not reach the CC. Appendix A-3. The Kants filed an appeal with Maryland's intermediate appellate court, the Court of Special Appeals ("CSA"). The CSA initially granted stay. Nevertheless, it ultimately denied jurisdiction on grounds that any matter that arises during an appeal of a DC decision with CC can only be raised on a certiorari petition with Maryland's highest court, the Court of Appeals (COA), and lifted its stay.[5]

After the stay was lifted, the Kants filed on November 8, 2002 their objections to sale-ratification with the CC. However, the CC did not consider these objections and confirmed the sheriff-sale on an *ex parte* basis on November 20, 2002. Appendix A-1. In its order of confirmation, the CC also ordered the sheriff to forthwith deliver a sheriff's deed to SSP. The Kants filed an appeal with the CSA against this confirmation, and moved the CSA to enjoin the sheriff from conveying the property's deed to the SSP. The CSA denied injunction on December 20, 2002. The sheriff gave the property's deed to the SSP on February 5, 2003. On August 21, 2003, the CSA again denied jurisdiction on the same grounds as before. Appendix A-4 to A-6. The Kants again requested COA to grant a writ of certiorari. COA denied this petition on December 16, 2003. Appendix A-7.

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[4]CC expressed these views at a hearing on this motion held on March 25, 2002. Excerpts from this hearing are enclosed in the Appendix.

[5]The Kants' filed this certiorari petition. The COA denied it.

ARGUMENT

A. Lack of an Actual Notice of Sale From Sheriff (and Refusal by the Court Clerk to Accept Supersedeas Bond Without Court-Order) Prevented the Kants From Filing a Timely Supersedeas Bond.

Maryland Rule 2-644(b) provides that the sheriff shall give notice of sale of an interest in real property at least 20 days before sale by posting on a bulletin board in immediate vicinity of the door of the courthouse and by publication in a newspaper of general circulation in the county where the property is located. Maryland statutes and rules do not require that the sheriff give property owner actual notice of sale, whether by certified mail or otherwise. Sheriff gave notice as required by this Rule. He published his notice of sale in a newspaper of general circulation in Montgomery County. He posted it on the court bulletin board. He did not mail the notice of sale to the Kants or personally serve them with it. He made no attempt that the Kants actually receive notice of sale of their property.

In *Tulsa Professional Collection Services, Inc. v. Pope,* 485 U.S. 478; 108 S. Ct. 1340; 99 L. Ed. 2d 565, this Court held that the Oklahoma nonclaim statute[6] violated the due process clause of the Federal Constitution's Fourteenth Amendment, because, although the statute provided solely for notice by publication, due process required that actual notice be given to known or reasonably ascertainable creditors of the decedent by mail or other means as certain to insure actual notice. *Tulsa* generally follows *Mullane* v. *Central Hanover Bank and Trust Co.*, 339 U. S. 306 and

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[6]The nonclaim statute does provide certain exceptions, however. If the creditor is out of State, then a claim "may be presented at any time before a decree of distribution is entered." § 333.

Mennonite Board of Missions v. *Adams*, 462 U. S. 791 in holding that on balance, satisfying creditors' substantial, practical need for actual notice in the probate setting is not so cumbersome or impracticable as to unduly burden the State's undeniably legitimate interest in the expeditious resolution of the proceedings, since mail service (which is already routinely provided at several points in the probate process) is inexpensive, efficient, and reasonably calculated to provide actual notice, and since publication notice will suffice for creditors whose identities are not ascertainable by reasonably diligent efforts or whose claims are merely conjectural.

The *Mullane* and *Mennonite* interpretation of Due Process Clause of the Fourteenth Amendment has been applied to sheriff sales by lower courts for those who have publicly recorded interest in the property. See *Verba v. Ohio Casualty Ins. Co.*, 851 F.2d 811, 816 (6th Cir. 1988) (holder of publicly recorded lien entitled to more than constructive notice of tax sale); *Harris v. Gaul*, 572 F. Supp. 1554, 1561 (N.D. Ohio 1983) (holder of property interest that is both "legally protected" and "publicly recorded" must be given actual notice of a pending sale).

In *Magee v. Amiss*, 502 So. 2d 568 (La. 1987), Dr. Magee contracted with Reynolds Roofing Company, Inc. for the repair of the community home. After refusing to pay Reynolds Roofing, Dr. Magee allowed the home to be seized and sold at a sheriff's sale. The original Act of Sale to Dr. Magee reflected Mrs. Magee's ownership interest in the property; however, she was not given notice before the sheriff's sale. The Louisiana court held that the foreclosure sale did not extinguish her interest, because the sale was without Mrs. Magee's consent and her due process right to notice under *Mennonite* was violated. Therefore, the subsequent purchasers only owned Dr. Magee's one-half interest.

In *Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883 (fifth circuit), Small Engine defaulted on a mortgage, and Cascio (creditor) had Small Engine's property seized. The sheriff published notice of the impending sale in the local newspaper. The district court found that Small Engine did not receive notice of the sheriff's sale. The appellate court agreed stating that the sheriff's sale, pursuant to a judicially-executed writ of seizure and sale, is a final act which has deprived Small Engine of property without due process.

In the case at bar, the sheriff informed the Kants of the levy but not of the actual sale of the property which was the final act. *Mennonite* was about notice requirements of informing a mortgagee that a tax sale of the mortgaged property was pending. *Mennonite* Court held in that case, "a mortgagee's knowledge of delinquency in the payment of taxes is not equivalent to notice that a tax sale is pending." The Kants' knowledge of the levy was not equivalent to a notice that a sale had been scheduled. *Mennonite* held "a party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation." The latter "was the information which the [county] was constitutionally obliged . . . to give personally to the appellant -- an obligation which the mailing of a single letter would have discharged." *Schroeder* v. *New York City*, 371 U.S. 214.

Property rights are personal rights, just as liberty rights are personal rights. *Mullane,* supra; *Mennonite*, supra at 2710 n. 3. *Small Engine*, supra, noted "Due process may be an evasive concept in particular circumstances. Yet its boundaries lie in sharp silhouette against the background of rights protected by the Clause." In *Mullane* this Court established that "[an] elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to

present their objections." "When notice is a person's due, process which is a mere gesture is not due process." *Mullane*, 70 S. Ct. at 657.

Although due process rights may be waived, a waiver of constitutional rights is not effective unless the right is intentionally and knowingly relinquished. *Bueno v. City of Donna*, 714 F.2d 484, 498-94 (5th Cir. 1983) (citing *Johnson v. Zerbst*, 304 U.S. 458, 464, 82 L. Ed. 1461, 58 S. Ct. 1019 (1938)). The Kants did not intentionally and knowingly relinquish their due process rights. Rather, they protested when they were given zero days to post a supersedeas bond from northern New Jersey to Rockville, Maryland.[7] They raised this and/or the constitutional issues both at the March 25, 2002-hearing before the CC and in their certiorari petitions filed with the COA. The CC ruled that the Kants' rights had not been violated. Under Maryland Rule 8-131(a), the COA has discretion to decide an issue not raised in or decided by the court below. Further, Md. Courts and Judicial Proceedings Code Ann. § 12-203, requires it to give written reasons for denial of a certiorari petition. The COA did not state in its ORDER that it was denying the petition because the constitutional issues were not adequately raised below. Appendix A-7. Excerpts from the March 25, 2002-hearing and from the Kants' certiorari petition to COA are included in the Appendix. Appendix A-8

[7]Per Maryland Rule 2-601(a), the effective date of this judgment is October 25, 2002 – the date the clerk entered this judgment as a separate document in the docket, and presumably mailed its copies to parties.

B. Maryland Statutes and Rules Give No Effective Remedy to Correct Errors in Execution Sales.

Table 1 compares provisions relating to redemption from execution sale and other special provisions in a sample of ten states to similar provisions in Maryland (as interpreted

TABLE 1

Redemption Period & Special Provisions

State	Statutory Redemption Period	Special Provisions	Relevant Code Section
Alabama	One Year		Code of Ala. § 6-5-248
Alaska	One Year & Before Con.		Alaska Stat. § 09.35.250
Arizona	Six Months		A.R.S. § §12-1281 & 12-1282
Arkansas	One Year		A.C.A. § 16-66-502
California		Enforcement Stayed On Appeal and Undertaking	Cal Code Civ Proc § 916
Colorado	75 Days		C.R.S. 38-38-302
Connecticut		Sale Conducted By a Court Appointed Committee	Conn. Gen. Stat. § 52-502
Delaware	60 Days & Before Con.		9 Del. C. § 8758
Florida		Levied Property's Value Cannot Exceed Judgment	Fla. Stat. § 56.27
Georgia		Enforcement Stayed for 60 days	O.C.G.A. § 9-13-70
Maryland	None	None	N.A.

in this case).[8] Six out of ten states provide a statutory right of redemption. The period of redemption runs from the date the sheriff-sale is confirmed by the court, or if, the state does not require court confirmation, from the date of sheriff-sale. Of the other four states, in Florida, levied property's value cannot exceed the judgment amount; the execution sale is conducted by a court-appointed committee in Connecticut; in Georgia, execution is suspended for 60 days after judgment if a bond is filed within four days; while in California, if an appeal is filed, enforcement of judgment is suspended pending disposition of the appeal provided the appellant files an undertaking with the notice of appeal. Maryland's statutes and rules relating to levy, stay, execution, and sale are the following: Md. Courts and Judicial Proceedings Code Ann. §§ 11-501 and 11-505, Md. Real Property Code Ann. § 14-103, and Maryland Rules 2-632, 2-642 through 2-644, 8-422 through 8-424, and 14-305.

As stated above, CSA denied it had jurisdiction to review this case and COA refused the certiorari petition. That makes the CC as the state court of last resort to rule on merits. The CC first denied the Kants' motion to quash the sheriff report of sale. Later, it confirmed the sale. Rulings in this case give the following interpretations of Maryland statutes: there is no statutory right of redemption in Maryland if the supersedeas bond is posted any time after sale; the sale is almost final when made with the court performing minimum or ministerial supervision over it before confirmation, and there is no mandatory appellate review of a court order confirming an execution-sale available if a DC judgment appealed to the CC is executed. In contrast to the provisions in most other states, these

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[8] These are the first 10 states when all 50 states are listed alphabetically. Should the Court grant certiorari, the petitioners, or their counsel, will submit similar information to the Court from the other 40 states.

constructions provide no effective remedy to cure an error in an execution sale.

Under right of due process, certain procedural safeguards must precede any significant deprivation of person's property interests; such safeguards seek to limit possibility of mistaken or wrongful deprivation during interim between initial taking and culmination of main suit. *State v Miller* (1979, Fla) 373 So 2d 677. Statutory right of redemption (and the requirement that the levied property's value not exceed the judgment amount) is one mechanism many states have adopted to prevent wrongful deprivation. *Salsbery v. Ritter*, 48 Cal. 2d 1; 306 P.2d 897; explained the development of the redemption statute as follows.

"Chancellor Kent discussed the development of the right to redeem from sale upon execution in his monumental "Commentaries." (14th ed., vol. 4, pp. 493-515.) He recounts that at common law, real property was not subject to execution, but that for the benefit of English creditors, the Statute of 5 George II, ch. 7 was enacted in 1732, making real estate in the English colonies subject to execution. For a long time it was the practice to sell the real estate absolutely, without possibility of redemption, but ". . . sales of land on execution had been attended with so much oppressive speculation upon the necessities of the debtor, . . ." (p. 431) that several states enacted statutes providing for redemption."

"It thus appears that one of the primary purposes of statutory redemption is to force the purchaser at the execution sale to bid the property in at a price approximating its fair value. (See 23 Mich.L.Rev. 825, 839-841.) This purpose is apparent in our statute from the provisions in sections 702 and 703 that any deficiency between the purchase price at the sale and the amount of the lien upon which the property was sold need not be paid

upon a subsequent redemption. To effectuate its purpose the statute must be construed to encourage redemption and make the property answer for existing liens up to its fair value."

The only Statute that relates to redemption in Maryland is Rule 8-422(c). This Rule states:

(c) When security filed after partial execution. If a supersedeas bond or other security is filed after partial execution on the judgment, the clerk of the lower court shall issue a writ directing the sheriff who has possession of any property attached to stay further proceedings and surrender the property upon payment of all costs of the execution that have accrued.

The above Rule, on plain reading, seems to create a right of redemption before a sale is confirmed. However, in the case at bar, the trial court ruled that the sale was complete at 10:30 a.m. on October 25, 2001.[9] In *Connecticut v. Doehr*, 501 U.S. 1; 111 S. Ct. 2105; 115 L. Ed. 2d 1; 1991 this Court ruled that the risk of erroneous and unwarranted deprivation that Connecticut permits under its pre-judgment attachment statute is self-evident and too great to satisfy the requirements of due process absent any countervailing

[9]It may be noted this interpretation of sales requiring confirmation is at variance with other state courts and this Court's opinion. See *Hazel v. Leonard*, 135 Wn.2d 45; 954 P.2d 1301 ("confirmation of the sale was as important of a step as the sale itself"); *Ehlers v. Campbell*, 147 Neb. 572; 23 N.W.2d 727 ("While the purported sale by the officer to the highest bidder carries with it certain legal rights . . . [T]he bid is only an offer to buy and until the court confirms the order of sale by the officer there is no sale); *In re Liquidation of Spokane Sav. Bank*, 198 Wash. 665, 672, 89 P.2d 802 "the bid [at sheriff's sale] does not become a contract until confirmed by the court"); and *Ballentyne v. Smith*, 205 U.S. 285; 27 S. Ct. 527; 51 L. Ed. 803; ("an execution sale is *not* final and complete when made. It is so only after confirmation.")

consideration. Connecticut pointed out that the statute also provides an "expeditiou[s]" postattachment adversary hearing, § 52-278e(c); notice for such a hearing, § 52-278e(b); judicial review of an adverse decision, § 52-278l(a); and a double damages action if the original suit is commenced without probable cause, § 52-568(a)(1). However, this Court held that even if it is true that a later hearing might negate the presence of probable cause, but "this would not cure the temporary deprivation that an earlier hearing might have prevented. "The Fourteenth Amendment draws no bright lines around three-day, 10-day or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause." *Fuentes* v. *Shevin*, 407 U.S. 67, 32 L. Ed. 2d 556, 92 S. Ct. 1983 (1972) at 86.

There were many errors in this case. Some of these are: no actual notice of the final act of sale was given to the property owners. The court clerk refused to accept supersedeas bond without a court order. The CC did not give a reasonable time to nonresident petitioners to post bond. The sheriff knew that petitioners had sent the bond-check by next morning's service of Federal Express on the 24th October, 2001-evening. No evidence has been introduced in this case that the sheriff knew that the property had a mortgage or that he knew its amount. He had the discretion to reject all bids and postpone the sale. He did neither: he accepted a bid of $6,200 for a property that he had appraised for $199,610. The court clerk accepted the bond-check 77 minutes late, and deposited it into the court registry. Yet, both she and the CC treated the final-bid or offer for purchase received on October 25, 2001 as the final sale itself.

The Kants have submitted in this case that the fair market value of the property when it was ratified was about

$350,000.[10] The property had a mortgage of about $154,000 making the Kants' equity to equal about $200,000. In *Naacp v Alabama* (1958) 357 US 449, 2 L Ed 2d 1488, 78 S Ct 1163, and in *Kreshik v St. Nicholas Cathedral of Russian Orthodox Church* 363 US 190, 4 L Ed 2d 1140, 80 S Ct 1037, this Court stated, "In determining whether state action is violative of due process clause of Fourteenth Amendment, it is immaterial "that the State has here acted solely through its judicial branch, for whether legislative or judicial, it is still the application of state power which we are asked to scrutinize." See *Shelley* v. *Kraemer*, 334 U.S. 1, 14-16, and cases there cited.

In Bouie v Columbia (1964) 378 US 347, 12 L Ed 2d 894, 84 S Ct 1697, this Court held, "The basic due process concept involved is the same as that which the Court has often applied in holding that an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question. See, *e. g., Wright* v. *Georgia*, 373 U.S. 284, 291; *N. A. A. C. P.* v. *Alabama*, 357 U.S. 449, 456-458." Maryland court's decision on Maryland Rule 8-422(c) was unforeseeable and unsupported, was at variance with other state courts' and this Court's construction of "partial execution" and "complete or final sale," and does not exclude this Court's review of the federal question.

C. This Case Raises Questions of Public Importance

This case presents issues of importance beyond the particular facts and parties involved. *Small Engine Shop, Inc. v. Cascio*, supra, *Harris v. Gaul*, supra, and *Magee v. Amiss*, supra have held that *Mullane* and *Mennonite* control sheriff sales also. However, in the case at bar, Maryland courts

[10]This averment has not been contested by the Respondents.

have ruled that giving petitioners zero days to post the supersedeas bond to stop a sheriff-sale did not violate due process notice requirements. The sheriff knew of the Kants' ownership and interests in the property. He had notified them of the levy. However, he did not actually notify them of the final act of sale. The burden on State to send this notification to the Kants was negligible: the sheriff had to only place a copy of his Notice of Sale in the mail to the Kants (who are citizens and residents of New Jersey). On the other hand, the potential of damage and injury to the Kants was immense, as this case shows. In addition, the lack of availability of a mandatory appellate review of a sheriff sale when the state has no statutory rights of redemption (and levied property's value can be a multiple of 30 of the judgment amount) is also troubling. The important public issue is that no citizen should be deprived of a significant property interest without due process.

CONCLUSION

The Kants' were deprived of the equity of about $200,000 in their property without due process. There are no effective remedies to correct errors in sheriff-sales in Maryland. The question of national importance is that no citizen should be deprived of a significant property interest without due process. The Kants pray this apex Court to grant this petition.

Respecfully Submitted,

Chander Kant
Ashima Kant
The Petitioners

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

BREGMAN, BERBERT & SCHWARTZ, LLC Appellee	:	
vs.	:	Civil No. 5597-D
CHANDER KANT & ASHIMA KANT Appellees	:	
HAITHAM HIJAZE Intervening Party	:	

ORDER

Upon consideration of the Intervening Party's Motion for Ratification of Sheriff's Sale of October 25, 2001, Haitham Hijaze, also known as Haitham Hijazi, and good cause having been found, it is this 18 day of Nov., 2002, by the Circuit Court for Montgomery County, Maryland

ORDERED, that the Sheriff's sale of October 25, 2001, at 10:30 a.m. be and the same is hereby ratified and the Sheriff is ordered forthwith to deliver a Sheriff's Deed to the Intervening Party, Haitham Hijaze, also known as Haitham Hijazi.

"s/William J. Rowan III"
JUDGE WILLIAM J. ROWAN, III

Entered
Nov 22 2002
Clerk of the Circuit Court
Montgomery County, Md.

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

BREGMAN, BERBERT & SCHWARTZ, LLC	:	
HAITHAM HIJAZE	:	
Plaintiff	:	
v.	:	DCA No.
	:	5597
CHANDER KANT	:	
ASHIMA KANT	:	
Defendant	:	

EXCERPTS FROM MOTIONS HEARING TRANSCRIPT

Rockville, Maryland March 22, 2002

Page 5, line 25 to Page 7, line 3 of Transcript [i.e. Page 1, line 25 to Page 3, line 3 of Proceedings]

THE COURT: Mr. Kant, you want to quash the report of sale. Let me tell you up front. Your bond was not filed, we checked and actually got a receipt for it, in a timely fashion. You can remain standing.

THE CLERK: It's No. 18, sir.

THE COURT: What is it?

THE CLERK: No. 18.

THE COURT: It was filed at 11:47 a.m. The sale took place, as I understand it, 10:30.

MR. KANT: Your Honor, I had - - I'm requesting the Court today to hold today the testimony, if I am permitted, Mr. Hijazi to intervene on this substantive question as to when the bond was received.

I would request a continuance so that I could summon the carrier from Federal Express and I could summon the sheriff's office people.

THE COURT: It doesn't matter who you summons. What's the purpose of summonsing them? I know what time this bond was filed. I have a receipt here from the clerk's office that shows that bond in the amount of $6,020, was received and filed at 11:47 a.m.

MR. KANT: Well, then, may I see whether the clerk's office, the reception office was open, for Federal Express packages to be received between 10:30 and 11:47?

Further, the Federal Express documents show that the package was delivered at 11:18 not 11:47.

THE COURT: Well, it doesn't matter if it was delivered. Any time delivered after 10:30, the ball game's up.

. . . . . .

CHANDER KANT et al.,	*	In the COURT OF
Appellants,	*	SPECIAL APPEALS
	*	
v.	*	No. 2098
	*	September Term, 2002
BREGMAN, BERBERT &	*	
SCHWARTZ, LLC et al.,	*	
Appellees.	*	

ORDER

1. The action giving rise to this appeal originated in the District Court of Maryland for Montgomery County when Appellee Bregman, Berbert & Schwartz, L.L.C. ("BBS") filed a Complaint alleging Appellants' failure to pay BBS for legal services rendered in a separate administrative appeal heard in the Circuit Court for Montgomery County. On February 14, 2001, the District Court entered judgment in favor of Appellee BBS and on March 9, 2001, denied Appellants' "Motion to Alter, Amend, and Revise the Judgment, Motion for Stay of Enforcement of Judgment, and Opposition to Plaintiff's Motion for Sanctions against Defendants."

2. On March 15, 2001, Appellants timely noted an appeal from the judgment of the District Court.

3. A Writ of Execution was issued on May 3, 2001, directing the Sheriff of Montgomery County to levy on residential property jointly owned by Appellants in Silver Spring, Maryland, to satisfy the judgment of $5,571.34. In an Order entered on October 22, 2001, the circuit court (Howan, J.) denied Appellants' Motion for Sanctions and Motion for Release from Levy.

4. On October 24, 2001, at 3:45 p.m., the circuit court (Howan, J.) ordered that Appellants' property would be

released from levy upon filing a bond for $6,020.00. Appellants were ordered to file said bond on or before October 25, 2001, at 10:30 a.m.

5. Appellants filed the required bond with the circuit court on October 25, 2001, at 11:47 a.m., some 77 minutes beyond the time set by the circuit court.

6. Appellants' Silver Spring property was sold at public sale on October 25, 2001 to Haitham Hijazi, a/k/a Haitham Hijaze, for $6,200.

7. On November 6, 2001, the Sheriff's Report of Sale of Real Property was filed. On November 14, 2001, Appellants moved to quash the Report of Sale and to release the levied property. Appellee filed a response to the Motion on November 21, 2001. On December 4, 2001, the purchaser filed a Motion to Intervene and included therein an objection to Appellants' Motion.

8. During a hearing on pending motions held on March 25, 2002, the court granted the purchaser's Motion to Intervene and denied Appellants' Motion to Quash Report of Sale and Release Levied Property. As to the purchaser's motion for an order directing that all rents from the Silver Spring property be paid into the circuit court registry, the court ordered that all rents be paid to a court-appointed receiver and that all expenses of said property be paid by the receiver. Finally, the court stated that it would take under advisement the merits of the underlying appeal from the judgment of the District Court "and issue a ruling as soon as possible." (Transcript of March 25, 2002 hearing, p. 44).

9. On March 27, 2002, Appellants filed a Motion to Revise the circuit court's ruling made during the March 25 hearing. The court denied Appellants' Motion in an Order entered on April 19, 2002.

10. On April 26, 2002, Appellants filed a Notice of Appeal which was docketed in this Court as No. 270, September Term, 2002. Further, proceedings in the circuit court were stayed during the pendency of the appeal.

11. Ultimately, on September 16, 2002, the appeal was dismissed as premature and thus not allowed by law, pursuant to Maryland Rule 8-602(a)(1). The Court's mandate issues on October 16, 2002.

12. Appellants filed a Petition for Writ of Certiorari in the Court of Appeals on October 31, 2002.

13. On November 20, 2002, the circuit court entered judgment, ratifying the October 25, 2001 Sheriff's sale and directing delivery of the deed to the purchaser.

14. On December 3, 2002, Appellants noted the current appeal.

It appearing from the record that the instant appeal was noted to this Court improperly from a judgment of the Circuit Court for Montgomery County made in the exercise of appellate jurisdiction in reviewing the judgment entered by the District Court on March 9, 2001.

Therefore, it is this 21st day of August, 2003, by the Court of Special Appeals, on its own initiative.

ORDERED that the above-captioned appeal be transferred to the Court of Appeals of Maryland. Courts and Judicial Proceedings Article, § 12-302(a), Maryland Rule 8-132.

CHIEF JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER

Chief Judge

CHANDER KANT et al.	*	**IN THE COURT OF**
	*	**APPEALS OF**
	*	**MARYLAND**
	*	
v.	*	**Petition Docket No. 343**
	*	**September Term, 2003**
BREGMAN, BERBERT &	*	
SCHWARTZ, LLC et al.	*	**(No. DCA 5597 Circuit**
	*	**Court for Montgomery**
	*	**County)**

ORDER

Upon consideration of the petition for writ of certiorari to the Circuit Court for Montgomery County, the supplement and the answers filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and supplement be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell

Chief Judge

DATE: December 16, 2003

RAISING OF CONSTITUTIONAL ISSUES IN THE STATE COURTS

March 25, 2002-Hearing Before The CC; Page 9, lines 10-23:

MR. KANT: Your Honor, your order said that - - you issued an order on 3:35 on 24th of October, saying that the property will be released upon filing of bond. That was at 3:35 p.m. on October 24.

THE COURT: No, it said the bond on or before 10:30 a.m.

MR. KANT: Yes, on or before 25th October at 10:30 a.m., yes.

THE COURT: Right.

MR. KANT: And I did everything that was feasible, that was possible for me to do. I used Federal Express overnight mail, and I sent it by priority overnight, and they are supposed to deliver it by 10:30 a.m., in the morning.

CERTIORARI PETITION TO THE COA, October 31, 2002:

Page 13: Since per Rule 1-324, the Clerk must mail copies of an Order only after it is entered, and since the affected party, petitioners, reside in New Jersey, it was impossible for petitioners to meet the deadline of 10:30 a.m. on October 25, 2001 for posting the supersedeas bond that was given in CC's October 25, 2001-Order.

CERTIORARI PETITION TO THE COA, October 10, 2003:

Page 6: Conveyance of this property violates [the petitioners'] property, due process, and equal protection rights guaranteed by the U.S. Constitution and 14th Amendment to it.

Page 16: When alternative property sufficient in value to judgment and enforcement costs is made available in the form of a bond, the court has no discretion but to release the property from levy/attachment. Ruling it otherwise violates a judgment debtor's constitutional rights to own property of his choosing.

Page 21: However, the CC ignored the Kants' objection to the sale-ratification: its November 20, 2003-order ratifying the sale did not acknowledge that the Kants had filed any objection to the sale-ratification. By ignoring the Kants' objections, the CC violated the Kants' due process rights guaranteed by the U.S. Constitution.